

**Brookline Board of Appeals
January 14, 2016, 7:00 PM
Public Hearing**

**333 Washington Street
6th Floor Selectmen's Hearing Room**

Board Members Present: Mark Zuroff (Chair), Kate Poverman, Christopher Hussey

Staff Present: Michael Yanovitch (Building Department), Jay Rosa (Planning Department)

850 Commonwealth Avenue

Proposal: Change use from full-service gas station to partial self-service gas station

Zoning District: G-2.0 (General Business)

Precinct: 1

Board Decision: Relief request **granted**, subject to conditions

25 Alton Court

Proposal: Relocate and reconfigure basement living space in a three-family dwelling

Zoning District: M-1.0 (Apartment House)

Precinct: 7

Board Decision: Case continued to **March 24, 2016**

78 Powell Street

Proposal: Convert existing carriage house into a single-family dwelling

Zoning District: SC-7 (Single-Family and Converted for Two-Family)

Precinct: 1

Board Decision: Relief request **granted**, subject to conditions

Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.

Decisions shall be posted on the Town of Brookline website (www.brooklinema.gov). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.

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Board Members Present: Mark Zuroff (*Chair*), Kate Poverman, Christopher Hussey

Staff Present: Michael Yanovitch (*Building Department*), Jay Rosa (*Planning Department*)

7:00PM

850 Commonwealth Avenue – Change use from full service gas station to partial self-service service gas station

Board Chairman Mark Zuroff opened the hearing and called case #2015-0064. Mr. Zuroff reviewed standard hearing procedures. The Petitioner's Attorney Michael Bozza of Village Law PC, located at 14 Boylston Place, waived the reading of public hearing for the notice and stated that the Petitioner, Emile Heraiki, is seeking zoning relief to change the use of the current mobile gas station located at 850 Commonwealth Avenue from an entirely full-service facility to a partial self-service facility. The existing convenience store and auto repair garage will remain and no changes to the exterior of the station are proposed.

Attorney Bozza further stated that this proposed conversion is intended to improve customer service. An automatic fire suppression system will also be installed under the existing station canopy hood in accordance with fire codes and local licensing requirements. Attorney Bozza stated that gas station staffing, vehicular access, and hours of operation will not change. Attorney Bozza did state that staffing may be altered as needed in the future if customer patterns dictate such a change.

Board Member Christopher Hussey requested further detail regarding the layout of fueling pumps. Attorney Bozza stated that two separate pumps provide fueling for four vehicles at a single time. The two pumps located closest to the convenience store will be converted for self-service. Attorney Bozza also stated that full-service will be maintained, particularly to assist customers that may have difficulty pumping their own gas.

Board Member Kate Poverman questioned how gas station staffing may be impacted.

Attorney Bozza stated that any staff changes will most likely take the form of reduced hours rather than the elimination of jobs. Attorney Bozza noted that late evening hours may be reduced if found to be unnecessary following the change to partial self-service.

Board Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Emile Gordon stated that he is a Precinct 1 Town Meeting Member and a resident of the Cottage Farm neighborhood. Mr. Gordon stated that he is a long-time customer of the Mobile gas station

and knows the facility well. Mr. Gordon stated that he has only experienced positive service and supports the Petitioner's request for zoning relief.

Elias Audy stated the he owns and operates two mobile gas stations in Brookline located on Route 9 and Harvard Street. Mr. Audy stated that he is a relative of Mr. Heraiki and has assisted with overall gas station operations. Mr. Audy stated that he believes the conversion to self-service makes sense from a business standpoint and will make fueling at the site safer and easier for both customers and staff.

No members of the public spoke in opposition.

Board Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported this proposal to convert the mobile gas station to partial self-service fueling. Design review under Zoning By-Law Section 5.09 is triggered for this proposed use however no exterior modifications to the existing station are proposed. The Board did consider strategies to alleviate traffic issues at the intersection between Commonwealth Avenue and Amory Street but were ultimately satisfied that current vehicular circulation on the site is effective. The Board also felt that the installation of a required automatic fire suppression system improves overall fire safety. Therefore, the Planning Board recommended approval of the site plan submitted by engineer Edward M. Sabbagh, dated 10/31/88, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan stamped and signed by a registered engineer or land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department also has no objection to the proposed conversion. Mr. Yanovitch stated that this conversion represents a minor change of use and he agreed that the conversion includes significant safety improvements. Mr. Yanovitch also agreed that the conversion to self-service is not anticipated to adversely impact traffic patterns in the immediate area.

Board Deliberation

Board Member Hussey stated that the conversion proposal is minor and sufficiently meets the standards for zoning relief in accordance with Zoning By-Law Section 9.05 and 5.09. For these reasons, Mr. Hussey was in favor of granting the requested zoning relief.

Board Member Poverman concurred with Mr. Hussey's comments and stated that the proposal is very straightforward. Ms. Poverman also supported proposed safety improvements.

Board Chairman Zuroff also cited overall safety improvements and believed that the standards for special permit relief are appropriately satisfied.

Unanimous Board grant of requested relief, subject to conditions included in the record.**25 Alton Court** – Relocate and reconfigure basement living space of a three-family dwelling

Board Chairman Zuroff called case #2015-0056 and reviewed standard hearing procedure.

The Petitioner's Attorney, Jacob Walters of Walters, Shannon, and Jensen, located at 27 Harvard Street, Brookline, MA, waived the reading of public hearing notice for the record and introduced project manager James Cullen.

Attorney Walters stated that the attached three-family dwelling is constructed of brick and located at the end of Alton Court, which is a private way. Attorney Walters stated that the property owner has generally refurbished both interior and exterior portions of the structure. The Petitioner is now seeking zoning relief in order to reconfigure finished basement space. Attorney Walters explained that a windowless area located at the front of the basement is currently included in gross floor area calculations. The Petitioner wishes instead to utilize a rear storage portion of the basement for living space because the area provides more natural light, windows, and a rear door. Attorney Walters described this reconfiguration as "swapping" living space and storage space at the basement level. Attorney Walters stated that the Zoning By-Law precludes the "decommission" of living space. For this reason, the gross floor area will be increased by 199 square feet, rather than reconfigured, requiring zoning relief. Similarly, the required usable open space is increased due to this gross floor area increase. Attorney Walters stated that the property currently provides no usable open space because the natural grade of the rear yard is greater than 8%. Attorney Walters stated that a proposed roof deck would increase provided usable open space for the property but does not fully satisfy the open space requirement. For this reason, Attorney Walters confirmed that a zoning variance is required.

Attorney Walters submitted photos of the rear yard (Exhibit A) to highlight the steep drop off from the rear of the structure toward the rear lot line. Attorney Walters also reviewed the statutory requirements for a variance as outlined in M.G.L. c40A, Section 10. Attorney Walters stated that lot and/or structural uniqueness related to soil condition or topography must be established as well as a direct hardship placed on the property owner as a result of the literal enforcement of zoning By-Law regulations. Attorney Walters also stated that the proposed project must also avoid detriment to the surrounding neighborhood. Attorney Walters believed that these standards are satisfied in this instance, particularly because the slope of the rear yard renders that portion of the lot unusable for open space purposes. In Attorney Walters' opinion, this significant slope presents a unique lot condition within the surrounding M-1.0 zoning district as well as the more immediate Alton Court neighborhood.

Attorney Walters believed that the proposal before the Board also satisfies the requirements for the grant of a special permit in accordance with Zoning By-Law Section 9.05 because:

- The specific site is an appropriate location for such a use, structure, or condition
- The use as developed will not adversely affect the neighborhood
- There will be no nuisance or serious hazard to vehicles or pedestrians

- Adequate and appropriate facilities will be provided for the proper operation of the proposed use
- The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people

Attorney Walters concluded his comments by requesting that the Board also consider revising special permit/variance conditions recommended by the Planning Board requiring the submission of a site plan that includes contour lines. Attorney Walters believed that the grade of the rear yard is clearly greater than the required 8%, and a site plan of this detail would include significant expense for the property owner.

Board Member Hussey questioned if the Petitioner considered the installation of a rear deck as a strategy to increase the total usable open space.

Project Manager Tom Helms stated that any rear patio would require approval of the Alton Court neighborhood association. Additionally, land located directly to the rear of the 25 Alton Court structure does not satisfy 15' x 15' dimensional requirements for consideration as usable open space, and this area of land serves as rear access for attached dwellings along Alton Court. Mr. Helms believed that a deck in this location would impede rear access for attached structures. Mr. Helms also stated that the work required to install a rear deck or porch that extends above the slope of the rear yard may negatively impact soil and drainage. Mr. Helms stated that the rear yard consists of fill rather than solid ground so significant piles would be required to ensure a structurally sound rear deck.

Board Member Hussey stated that the structure and lot were created in the early 1900's and therefore the slope of the rear yard is most likely settled, however he did agree that a geotechnical engineer would be required to design a deck in this area.

Board Chairman Zuroff questioned if Attorney Walters represents the owner of the entire building, and if it is the property owner's intent to sell individual units as condominiums.

Attorney Walters confirmed that one individual currently owns the entire attached building. Ongoing repairs are intended to convert the structure to condominiums for individual sale.

Board Member Poverman questioned if Zoning By-Law Section 8.02, regarding the alteration of a pre-existing non-conforming structure, may be applied to the Petitioner's open space deficiency, requiring special permit relief rather than a variance.

Deputy Building Commissioner Michael Yanovitch stated that the Zoning By-Law does not provide any special permit relief for deficient usable open space. Additionally, case law relating to the alteration of pre-existing non-conforming structures (M.G.L. c40A, Section 6), provides protection for single-and two-family structures. Mr. Yanovitch stated that this same protection is not currently afforded to three-family structures.

Board Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

No members of the public commented.

Board Chairman Zuroff requested that Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that The Planning Board unanimously supported the additional basement floor area at 25 Alton Court. Proposed finished basement space requires no exterior modifications and results in a modest floor area increase. Board members suggested the installation of a rear patio to provide open space for residents but acknowledged that is a feature that should be discussed by the condominium association. Board Members also specifically requested the inclusion of rooftop mechanical details on final submitted plans as well as contour lines on the final submitted site plan to confirm the rear yard grade change. Therefore, the Planning Board recommended approval of plans submitted by Guy N. Grassi, dated 3/6/2015, and the site plan submitted by Guy N. Grassi, dated 11/30/2014. Should the Board of Appeals find that the statutory requirements for a variance are met, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans including gross floor area calculations and roof deck dimensions, and a surveyed final site plan including lot topography, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan including lot topography stamped and signed by a registered engineer or land surveyor; 2) final floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Zuroff requested that Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that it is unfortunate that the proposal is “punished” due to the inability to decommission currently finished basement floor area. Mr. Yanovitch also noted that the usable open space sections of the By-Law are demanding even though the basement proposal only requires a minimal amount of additional usable open space. Mr. Yanovitch acknowledged that the Petitioner attempted to satisfy open space requirements through the installation of a roof deck however a variance is still required. In general, Mr. Yanovitch also felt that the basement conversion proposal is a minor interior alteration that requires no exterior modifications. Mr. Yanovitch stated that he has no objection to the relief as requested, therefore if the Board does find that the statutory requirements for a variance are satisfied, the Building Department will work with the petitioner to ensure compliance with all imposed conditions and building codes.

Board Chairman Zuroff questioned if any structural issues arise when considering the proposed roof deck and/or a ground-level rear patio. Mr. Yanovitch stated that proper engineering review occurred regarding roof deck plans and relevant building codes are met. Mr. Yanovitch did note that roof deck access issues did arise and, as a result, the roof deck will only be utilized by residential unit #3 which is located at the third floor. Mr. Yanovitch believed that a rear patio is generally feasible even with the unknown condition of the rear-yard fill. Construction of a deck in this area is really just a matter of wood, concrete, and money in Mr. Yanovitch's opinion, however site drainage would be looked at carefully.

Board Deliberation

Board Chairman Zuroff stated that he recognized the importance of open space requirements in terms of preserving usable open space for the town and individual residents however, in this instance, Mr. Zuroff questioned if the Board is considering a rear patio for the sake of compliance rather than effective and appropriate development of the property. Mr. Zuroff also stated that the variance request is perhaps less significant than many that come before the Board and felt that there may be justification for the grant of a variance. Mr. Zuroff stated that he was not in favor of a potentially unnecessary rear patio.

Board Member Hussey requested that the Petitioner further address the claim of hardship in relation to the variance request.

Attorney Walters reiterated that the topographical condition of the rear yard directly results in a hardship placed on the Petitioner. Mr. Walters believed that there is no feasible alternative to create additional open space without significant cost and unnecessary development.

Mr. Hussey suggested that the requested variance relief is a direct result of the proposed floor area increase rather than the slope of the rear yard. Mr. Hussey rephrased his question and asked why the additional basement floor area is required.

Attorney Walters responded by stating that the front portion of the basement provides no windows and natural light. The Petitioner desires to move this usable floor area to the rear of the structure to improve both the safety and usability of this basement space. Attorney Walters reiterated that any reconfiguration of the basement space would result in a floor area increase.

Board Member Poverman believed that the unique lot topography standard as discussed by Attorney Walters is valid but she was unconvinced that a direct hardship has been established. Ms. Poverman stated that the Petitioner's desire to finish additional basement space does not necessarily constitute a hardship.

Attorney Walters argued that all variance requests may be "boiled down" to the Petitioner's desire to complete site work. In this particular case, Mr. Walters believed that the slope of the rear yard prevents the Petitioner from improving basement space in a manner that will have no impact on abutting residents.

Board Member Hussey supported the Petitioner's request for a variance and specifically cited the lack of natural light at the basement level as a reasonable hardship.

Board Chairman Zuroff concurred with Ms. Poverman's comments and stated that the unique topography of the lot is firmly established but a clear hardship, whether economic or otherwise, has not been presented, nor is there a direct correlation between the presented hardship and the slope of the rear yard.

The Board requested if the Petitioner wished to withdraw or continue this request for relief.

Attorney Walters requested to continue this date to March 24, 2016. If an earlier date becomes available, the Board ensured that public notice requirements will be followed in accordance with M.G.L c40A.

Unanimous Board grant of continuance request to 3/24/16

78 Powel Street – Convert existing carriage house into a single-family dwelling

Board Chairman Zuroff called case #2015-0065 and reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen Jr. located at 300 Washington Street, Brookline, MA waived the reading of public hearing notice for the record and introduced property owner Daniel Britton and project architect Kent Duckham.

Attorney Allen stated that the Petitioner has worked with the Town on this proposal since July of 2015 largely because the structure is located within the Cottage Farm local historic district. The property contains a primary single-family dwelling constructed in 1896 and a detached carriage house constructed in 1897. The Petitioner is proposing to convert the detached carriage house into a single-family dwelling unit. Attorney Allen stated that all requested zoning relief associated with this proposed conversion is associated with the carriage house and not the primary structure.

Property owner Daniel Britton stated that he wishes to convert this carriage house to allow a former neighbor/friend to age in place rather than moving to an assisted living facility. In order to provide adequate medical attention for this individual, a kitchen facility must be included in the carriage house as well as a bedroom for a live-in medical aid as needed. Mr. Britton believed that this carriage house conversion is an ideal solution to allow his friend to age comfortably in place.

Mr. Britton stated that a structural engineer evaluated the condition of the carriage house and concluded that significant repair is required to complete the desired conversion. Repair of the damaged foundation and various wood portions of the structure are anticipated to cost over \$400,000 while interior fit-out is anticipated to cost over \$50,000. Mr. Britton stated that repair of this historic structure would most likely not occur if the structure were not converted for residential use. Mr. Britton concluded his comments by stating that he does not wish to rent this unit in the future but he will be required to in order to make the conversion financially feasible. Mr. Britton also reiterated that his primary motivation to convert the structure at this time is to assist his former neighbor.

Attorney Allen stated that proposed renovation of the carriage house includes minimal exterior modifications that were supported by the Preservation Commission. Additionally, the Planning Board unanimously supported the proposed design of the renovated carriage house and recommended a condition requiring final approval by the Preservation Commission if the project is indeed supported by the Board of Appeals.

Attorney Allen stated that the carriage house is rather unique due to the existence of an underground connection between the two structures (shared basement hallway). Attorney Allen also stated that the carriage house appears to be connected to the primary structure when viewed from surrounding public ways. Despite this connection, Attorney Allen stated that the Building

Department interprets these structures to be separated, thus requiring a use variance to located two single-family dwellings on a single lot.

Architect Kent Duckham reviewed proposed alterations and improvements. Mr. Duckham also confirmed that the project is challenging for a variety of reasons including the historic nature, the zoning relief required, and the structural condition of the carriage house. Mr. Duckham also stated that the front entry width is not appropriate for modern vehicles and therefore the carriage house cannot be used for vehicle storage. Portions of the first floor are finished and there is internal evidence of heating, water, and plumbing systems.

Mr. Duckham stated that the entire structure would be renovated to include living and cooking space as well as two bathrooms and three bedrooms. Mr. Duckham confirmed that first-floor living space would be used for the elderly individual and the upper floor would be utilized for the in-home caretaker as needed. A rear-facing shed dormer is also proposed to provide adequate head clearance for the second floor bathroom. Zoning relief is required for both rear and side yard setbacks as a result of the shed dormer and the reconfigured front porch. Mr. Duckham also stated that variance relief is required for the proposed floor area ratio (FAR) increase as well as the provided usable open space. Mr. Duckham stated that all of these relief elements are pre-existing non-conformities.

Mr. Duckham stated that the majority of exterior work would restore existing elements however small modifications to window locations are required to lower the interior height of the second floor.

Board Member Hussey stated that a second floor study constitutes a fourth bedroom and variances for FAR and open space would not be required if the Petitioner does not convert entire second floor of the carriage house to living space. Mr. Hussey calculated the additional floor area to be approximately 720 square feet.

Mr. Hussey also questioned why the below grade connection does not result in a two-family dwelling rather than two separate single-family dwellings.

Mr. Yanovitch stated that this interpretation is not specifically cited in the Zoning By-Law but is standard practice by the Building Department and expressed hesitation in establishing a precedent that a below grade connection may be interpreted as a two-family dwelling. In general, a reasonable connection must be covered and include a floor. Mr. Yanovitch stated that the Preservation Commission also did not support a visible connection between these two structures. Mr. Yanovitch also added that the use variance provides a "cleaner" argument for zoning relief in this instance.

Attorney Allen reviewed compliance with special permit relief standards specifically for requested setback and design review relief. Attorney Allen reiterated the fact that both the Planning Board and Preservation Commission supported the design of the carriage house as well as a roof deck on the primary structure following a reduction in overall size. Attorney Allen stated that deteriorating structural elements will be repaired, trash facilities will be screened from public view, both structures will be improved from a fire rating standpoint, and radiant heat will be included in proposed walkways to improve snow melt and drainage.

More generally, Attorney Allen also believed that this proposal meets By-Law Section 9.05 standards for special permit relief because the location is appropriate for a structure of this design

and use. Attorney Allen stated that rear yard structures are fairly common throughout the Cottage Farm neighborhood. Attorney Allen also stated that this conversion is supported by neighboring residents and serves to improve the availability of affordable housing in Brookline.

Attorney Allen noted that required relief for FAR and usable open space also meet the statutory requirements for a variance but may be granted via special permit following a M.G.L c.40A, Section 6 finding if the Board determines that no substantial detriment to the neighborhood will result.

Lastly, Attorney Allen reviewed compliance with the requirements for a grant of a variance specifically for the proposed use conversion and access the Powell Street for a dwelling located to the rear of a primary structure. Attorney Allen stated that use variances may not be granted unless specifically provided for in local zoning regulations. Attorney Allen reviewed Zoning By-Law Section 9.09 and stated that a use variance may be granted if the proposal preserves or restores a structure of historical or architectural significance. Attorney Allen believed that this Section 9.09 threshold is appropriately satisfied but did acknowledge that the statutory requirements for a variance must also be established. Attorney Allen believed that the carriage house structure itself is unique because it is in close proximity to the primary structure and presents an L-shape in which the carriage house wraps around the primary structure. This structure is also unique because it was constructed at a later date than the primary structure and cannot currently be used in the most reasonable manner of a garage without significantly altering the historic character. Attorney Allen also noted that portions of the currently uninhabitable carriage house space are included in gross floor area calculations for the property. Attorney Allen believed that these condition result in the underutilization of the historic structure which will continue to deteriorate sans significant financial investment. Attorney Allen also stated that the Preservation Commission in no way supports demolish of the carriage house by neglect within local historic districts. For these reasons, Attorney Allen believed that the Petitioner must renovate the structure at a substantial cost. Additionally, this renovation only becomes financially feasible if the Petitioner is able to capture rental revenue from this investment. Attorney Allen also stated that the restored/converted carriage house will also become a taxable asset for the Town.

Board Member Poverman requested that Attorney Allen further discuss the appropriateness of a Section 6 finding rather than variance relief pertaining to the proposed floor area and usable open space.

Attorney Allen stated that if the Board finds that the statutory requirements for a variance are met for the use variance itself, that standard is applicable for all variance requests before the Board. Attorney Allen believed that this line of thinking is particularly applicable because all triggered zoning non-conformities are a direct result of the restoration and conversion of the carriage house.

Attorney Allen further stated that recent case law (*Deadrick v. Zoning Board of Appeals of Chatham, 2014*) supports the expansion or alteration of pre-existing non-conforming conditions for single and two-family dwellings following a Section 6 finding if no substantial detriment to the neighborhood will arise. Attorney Allen stated that all requested relief before the Board can be characterized as an extension of pre-existing non-conformities, aside from the use change of the carriage house and frontage/vehicular access requirements for the newly created single-family

dwelling located at the rear of the lot. Attorney Allen stated that no substantial detriment will result if these non-conformities are altered as evidenced by widespread abutter support. Attorney Allen also noted that the structural footprint and massing of structures on the lot will not be altered in any significant way despite the fact that the intensity of use will be altered.

Board Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

No members of the public commented.

Board Chairman Zuroff requested that Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously supported the carriage house conversion to living space. Board Members felt that the project is well designed and does not require significant alteration of the existing structures despite the intensified use of the property. The Board agreed that there would be limited visual evidence that the carriage house serves as a separate dwelling unit, and relevant design review standards are satisfied as much as practicable. The Planning Board also favored final Preservation Commission approval if this proposal is supported by the Board of Appeals. Therefore, the Planning Board recommends approval of plans by architect Kent Duckham, dated 11/20/2015 and revised 1/7/2016, and the site plan by land surveyor Bruce Bradford, dated 12/8/2015. Should the Board of Appeals find that the statutory requirements for a variance are met, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating all structural and parking space setbacks, as well as carriage house floor plans and elevations, subject to review and approval by the Assistant Director for Regulatory Planning and a Preservation Planner.
2. The carriage house basement space shall remain unfinished, unless otherwise approved by the Board of Appeals.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, subject to review and approval by the Assistant Director for Regulatory Planning.
4. The two dwelling units shall remain in one ownership.
5. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; 3) a Certificate of Appropriateness issued by the Preservation Commission; and 4) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Zuroff requested that Michael Yanovitch review the opinion of the Building Department. Mr. Yanovitch stated that the scale of renovation may be extensive but is rather minimal in terms of visible exterior modification. Mr. Yanovitch agreed that the majority of

complexity arises from the most appropriate evaluation of requested zoning relief. Mr. Yanovitch confirmed that the Building Department reviewed this proposal at length and ultimately felt comfortable with the determination that the property is best evaluated as two detached single-family dwellings necessitating the use variance. Mr. Yanovitch specifically referenced Zoning By-Law Section 5.04.2 and 9.09 to illustrate that the Town generally encourages conversion projects of this type. Mr. Yanovitch further described the so-called double variance standard referenced by Attorney Allen in which the use variance standard relating to the preservation of an historic structure must be established just as the statutory requirements for a variance must be met (uniqueness and hardship). Mr. Yanovitch agreed that the statutory standard is either satisfied or not, providing support for Attorney Allen's assertion that a Board finding is applicable for all variance requests currently before the Board.

Mr. Yanovitch stated that case law relating to the modification of non-conforming structures is increasingly refined, but he did believe that the intensified use of the property does force the Board to consider the most appropriate finding.

Board Deliberation

Board Member Hussey reiterated the fact that the Petitioner does have the option to not alter carriage house floor area to avoid the need for FAR and open space related variance. Mr. Hussey did acknowledge that the variance standard for the use and frontage/vehicular access would still remain for Board deliberation.

Board Chairman Zuroff suggested that the Board interpret this proposal in totality in order to consider the overall perspective. Mr. Zuroff generally supported the preservation of the historic carriage house and noted that the majority of abutting residents submitted written support for this project. Mr. Zuroff was not fully satisfied with the Petitioner's variance argument but he did believe that a nexus between the usability of the carriage house in its current condition and the financial investment required to preserve the structure may exist.

Mr. Hussey further stated that the converted carriage house would clearly provide a taxable asset and the additional floor area helps to alleviate the financial burden associated with restoring the structure.

Board Member Poverman also supported the preservation of the historic structure but she expressed concern about permitting two single-family dwellings on a single lot. Ms. Poverman appreciated Mr. Duckham's review of the physical condition of the structure and Ms. Poverman agreed that there is an obligation placed on the property owner to avoid demolition of the historic structure through neglect. Ms. Poverman was not convinced that a clear hardship, whether financial or otherwise, has been established by the abutter.

Board Members generally agreed that the intent of By-Law Section 5.04 is to provide adequate frontage for lots located to the rear of an entirely separate lot, most commonly achieved through subdivision. In this instance, the same provisions do apply for a dwelling located on the rear portion of the same lot but the literal interpretation of these regulations are not necessarily a perfect fit when applied to this project.

Board Chairman Zuroff stated that the cost associated with preserving the historic structure could be interpreted as a financial hardship. Board Member Hussey concurred and further stated that the carriage house may further deteriorate if zoning relief is not granted. Mr. Hussey also believed that the Preservation Commission most probably would not permit the Petitioner to outright demolish the carriage house.

Board Member Poverman stated that preserving an historic structure is significantly different from creating a second residential unit. Ms. Poverman also was not satisfied that fulfilling the best potential use of a structure, as argued by the Petitioner, constitute a hardship in this case.

Attorney Allen stated that the underutilized and deteriorating historic structure is a condition that would be afforded to any individual who owns this property. Attorney Allen stated that this challenge is a direct result of the unique carriage house structure that requires financial investment to rectify. Mr. Allen also stated that this financial hardship is not necessarily self-imposed because the property owner is prohibited from demolishing, whether deliberate or through neglect, the underutilized structure.

Mr. Britton stated that the structural engineer anticipates full restoration and renovation of the carriage house to cost approximately \$450,000. Mr. Britton confirmed that he has lived at 78 Powell Street since 1995 and has had no reason to renovate the carriage house until now. Mr. Britton reiterated the fact that he must only rent the carriage house in the future to make this investment financially feasible.

Board Members Zuroff and Hussey agreed that the Petitioner's proposal is perhaps the most practical solution to restore the carriage house in a financially feasible manner for the property owner. Mr. Zuroff specifically stated that the variance standard can be reached regardless of the Petitioner's motivation to allow a neighbor to age in place which is a temporary condition that does not constitute a hardship.

Board Member Poverman reiterated that she did not support the creation of two single-family dwellings located on the same lot but she did believe that the investment associated with maintaining the historic structure that would otherwise continue to deteriorate does reach the standard for a hardship. Ms. Poverman also supported the argument that the structure itself is a unique condition that is directly related to this financial hardship. For these reasons, Ms. Poverman believed that the statutory requirements for a variance are satisfied.

Board Chairman Zuroff concurred and also believed that the standard for special permit relief is also satisfied in accordance with Zoning By-Law Section 9.05

Unanimous Board grant of requested special permit and variance relief, subject to conditions stated for the record.

Hearing Closed.